

Permissible Use of Seclusion and Restraint

This Act clarifies when public school personnel can seclude and restrain students to manage student behavior. Generally, under the Act, school personnel can physically restrain a student to break up a fight, seize weapons, or for self-defense. School personnel can seclude a student to keep them from being harmed or harming others if the student is monitored while they are kept in seclusion.

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North Carolina
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Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act to Clarify the Permissible Use
2 of Seclusion and Restraint in Public Schools and to Provide for Training in Management of
3 Student Behavior.”

4
5 Section 2. [*Permissible Use of Seclusion and Restraint.*]

6 (a) It is the policy of this state to:

7 (1) promote safety and prevent harm to all students, staff, and visitors in the
8 public schools;

9 (2) treat all public school students with dignity and respect in the delivery of
10 discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by
11 law;

12 (3) provide school staff with clear guidelines about what constitutes use of
13 reasonable force permissible in this state’s public schools;

14 (4) improve student achievement, attendance, promotion, and graduation rates by
15 employing positive behavioral interventions to address student behavior in a positive and safe
16 manner, and

17 (5) promote retention of valuable teachers and other school personnel by
18 providing appropriate training in prescribed procedures, which address student behavior in a
19 positive and safe manner.

20 (b) The following definitions apply in this section:

21 (1) “Assistive technology device” means any item, piece of equipment, or product
22 system that is used to increase, maintain, or improve the functional capacities of a child with a
23 disability.

24 (2) “Aversive procedure” means a systematic physical or sensory intervention
25 program for modifying the behavior of a student with a disability which causes or reasonably
26 may be expected to cause one or more of the following:

27 a. significant physical harm, such as tissue damage, physical illness, or
28 death;

29 b. serious, foreseeable long-term psychological impairment, or

30 c. obvious repulsion on the part of observers who cannot reconcile
31 extreme procedures with acceptable, standard practice, for example: electric shock applied to the

32 body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth,
33 eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting,
34 or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of
35 meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

36 (3) "Behavioral intervention" means the implementation of strategies to address
37 behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

38 (4) "IEP" means a student's Individualized Education Plan.

39 (5) "Isolation" means a behavior management technique in which a student is
40 placed alone in an enclosed space from which the student is not prevented from leaving.

41 (6) "Law enforcement officer" means a sworn law enforcement officer with the
42 power to arrest.

43 (7) "Mechanical restraint" means the use of any device or material attached or
44 adjacent to a student's body that restricts freedom of movement or normal access to any portion
45 of the student's body and that the student cannot easily remove.

46 (8) "Physical restraint" means the use of physical force to restrict the free
47 movement of all or a portion of a student's body.

48 (9) "School personnel" means:

49 a. employees of a local board of education;

50 b. any person working on school grounds or at a school function under a
51 contract or written agreement with the public school system to provide educational or related
52 services to students; or

53 c. Any person working on school grounds or at a school function for
54 another agency providing educational or related services to students.

55 (10) "Seclusion" means the confinement of a student alone in an enclosed space
56 from which the student is:

57 a. physically prevented from leaving by locking hardware or other means.

58 b. not capable of leaving due to physical or intellectual incapacity.

59 (11) "Time-out" means a behavior management technique in which a student is
60 separated from other students for a limited period of time in a monitored setting.

61 (c) Physical Restraint:

62 (1) Physical restraint of students by school personnel shall be considered a
63 reasonable use of force when used in the following circumstances:

64 a. as reasonably needed to obtain possession of a weapon or other
65 dangerous objects on a person or within the control of a person;

66 b. as reasonably needed to maintain order or prevent or break up a fight;

67 c. as reasonably needed for self-defense;

68 d. as reasonably needed to ensure the safety of any student, school
69 employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to
70 prevent self-injurious behavior;

71 e. as reasonably needed to escort a student safely from one area to another.

72 f. if used as provided for in a student's IEP or [Section 504] plan or
73 behavior intervention plan; or

74 g. as reasonably needed to prevent imminent destruction to school or
75 another person's property.

76 (2) Except as set forth in subdivision (1) of this subsection, physical restraint of
77 students shall not be considered a reasonable use of force, and its use is prohibited.

78 (3) Physical restraint shall not be considered a reasonable use of force when used
79 solely as a disciplinary consequence.

80 (4) Nothing in this subsection shall be construed to prevent the use of force by
81 law enforcement officers in the lawful exercise of their law enforcement duties.

82 (d) Mechanical Restraint:

83 (1) Mechanical restraint of students by school personnel is permissible only in the
84 following circumstances:

85 a. when properly used as an assistive technology device included in the
86 student's IEP or [Section 504] plan or behavior intervention plan or as otherwise prescribed for
87 the student by a medical or related service provider;

88 b. when using seat belts or other safety restraints to secure students during
89 transportation;

90 c. as reasonably needed to obtain possession of a weapon or other
91 dangerous objects on a person or within the control of a person;

92 d. as reasonably needed for self-defense; or

93 e. as reasonably needed to ensure the safety of any student, school
94 employee, volunteer, or other person present.

95 (2) Except as set forth in subdivision (1) of this subsection, mechanical restraint,
96 including the tying, taping, or strapping down of a student, shall not be considered a reasonable
97 use of force, and its use is prohibited.

98 (3) Nothing in this subsection shall be construed to prevent the use of mechanical
99 restraint devices, such as handcuffs by law enforcement officers in the lawful exercise of their
100 law enforcement duties.

101 (e) Seclusion:

102 (1) Seclusion of students by school personnel may be used in the following
103 circumstances:

104 a. as reasonably needed to respond to a person in control of a weapon or
105 other dangerous object;

106 b. as reasonably needed to maintain order or prevent or break up a fight;

107 c. as reasonably needed for self-defense;

108 d. as reasonably needed when a student's behavior poses a threat of
109 imminent physical harm to self or others or imminent substantial destruction of school or another
110 person's property; or

111 e. when used as specified in the student's IEP, [Section 504] plan, or
112 behavior intervention plan, and

113 1. the student is monitored while in seclusion by an adult in close
114 proximity who is able to see and hear the student at all times;

115 2. the student is released from seclusion upon cessation of the
116 behaviors that led to the seclusion or as otherwise specified in the student's IEP or [Section 504]
117 plan;

118 3. the space in which the student is confined has been approved for
119 such use by the local education agency;

120 4. the space is appropriately lighted;

121 5. the space is appropriately ventilated and heated or cooled, and

122 6. the space is free of objects that unreasonably expose the student
123 or others to harm.

124 (2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is
125 not considered reasonable force, and its use is not permitted.

126 (3) Seclusion shall not be considered a reasonable use of force when used solely
127 as a disciplinary consequence.

128 (4) Nothing in this subsection shall be construed to prevent the use of seclusion by
129 law enforcement officers in the lawful exercise of their law enforcement duties.

130 (f) Isolation. – Isolation is permitted as a behavior management technique provided that:
131 (1) the space used for isolation is appropriately lighted, ventilated, and heated or
132 cooled;
133 (2) the duration of the isolation is reasonable in light of the purpose of the
134 isolation;
135 (3) the student is reasonably monitored while in isolation;
136 (4) the isolation space is free of objects that unreasonably expose the student or
137 others to harm;

138 (g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-
139 out as defined in this section.

140 (h) Aversive Procedures. – The use of aversive procedures as defined in this section is
141 prohibited in public schools.

142 (i) Nothing in this section modifies the rights of school personnel to use reasonable force
143 as permitted under [insert citation] or modifies the rules and procedures governing discipline
144 under [insert citation].

145 (j) Notice, Reporting, and Documentation.

146 (1) Notice of procedures. – Each local [board of education] shall provide copies of
147 this section and all local [board] policies developed to implement this section to school personnel
148 and parents or guardians at the beginning of each school year.

149 (2) Notice of specified incidents:
150 a. School personnel shall promptly notify the principal or principal's
151 designee of:
152 1. any use of aversive procedures;
153 2. any prohibited use of mechanical restraint;
154 3. any use of physical restraint resulting in observable physical
155 injury to a student; or
156 4. any prohibited use of seclusion or seclusion that exceeds [10
157 minutes] or the amount of time specified on a student's behavior intervention plan.

158 b. When a principal or principal's designee has personal knowledge or
159 actual notice of any of the events described in this subdivision, the principal or principal's
160 designee shall promptly notify the student's parent or guardian and will provide the name of a
161 school employee the parent or guardian can contact regarding the incident.

162 (3) As used in subdivision (2) of this subsection, “promptly notify” means by the
163 end of the workday during which the incident occurred when reasonably possible, but in no event
164 later than the end of following workday.

165 (4) The parent or guardian of the student shall be provided with a written incident
166 report for any incident reported under this section within a reasonable period of time, but in no
167 event later than [30 days] after the incident. The written incident report shall include:
168 a. the date, time of day, location, duration, and description of the incident
169 and interventions;
170 b. the events or events that led up to the incident;
171 c. the nature and extent of any injury to the student, and
172 d. the name of a school employee the parent or guardian can contact
173 regarding the incident.

174 (5) No local board of education or employee of a local board of education shall
175 discharge, threaten, or otherwise retaliate against another employee of the board regarding that
176 employee's compensation, terms, conditions, location, or privileges of employment because the

177 employee makes a report alleging a prohibited use of physical restraint, mechanical restraint,
178 aversive procedure, or seclusion, unless the employee knew or should have known that the report
179 was false.

180 (k) Nothing in this section shall be construed to create a private cause of action against
181 any local board of education, its agents or employees, or any institutions of teacher education or
182 their agents or employees or to create a criminal offense.

183

184 Section 3. [*Teacher Certification Requirements.*]

185 (a) It is the policy of this state to maintain the highest quality teacher education programs
186 and school administrator programs in order to enhance the competence of professional personnel
187 certified in this state. To the end that teacher preparation programs are upgraded to reflect a more
188 rigorous course of study, the state [board of education], as lead agency in coordination and
189 cooperation with the [university board of governors, the board of community colleges] and such
190 other public and private agencies as are necessary, shall continue to refine the several
191 certification requirements, standards for approval of institutions of teacher education, standards
192 for institution-based innovative and experimental programs, standards for implementing
193 consortium-based teacher education, and standards for improved efficiencies in the
194 administration of the approved programs. The certification program shall provide for initial
195 certification after completion of preservice training, continuing certification after [three] years of
196 teaching experience, and certificate renewal every [five] years thereafter, until the retirement of
197 the teacher. The last certificate renewal received prior to retirement shall remain in effect for
198 [five] years after retirement.

199 (b) The state [board of education], as lead agency in coordination with the [board of
200 governors of the state university] and any other public and private agencies as necessary, shall
201 continue to raise standards for entry into teacher education programs.

202 (c) The state [board of education], in consultation with the [board of governors of the
203 state university], shall evaluate and develop enhanced requirements for continuing certification.
204 The new requirements shall reflect more rigorous standards for continuing certification and to
205 the extent possible shall be aligned with quality professional development programs that reflect
206 state priorities for improving student achievement.

207 (d) The state [board of education], in consultation with local boards of education and the
208 [board of governors of the state university], shall reevaluate and enhance the requirements for
209 renewal of teacher certificates. The state [board] shall consider modifications in the certificate
210 renewal achievement and to make it a mechanism for teachers to renew continually their
211 knowledge and professional skills. The state [board] shall adopt new standards for the renewal of
212 teacher certificates by [insert date].

213 (e) The standards for approval of institutions of teacher education shall require that
214 teacher education programs for all students who do not major in special education include
215 demonstrated competencies in the identification and education of children with learning
216 disabilities and positive management of student behavior and effective communication
217 techniques for defusing and deescalating disruptive or dangerous behavior. The state [board of
218 education] shall incorporate the criteria developed in accordance with [insert citation] for
219 assessing proposals under the [school administrator training program] into its [school
220 administrator program] approval standards.

221 (f) All state institutions of higher education that offer teacher education programs,
222 masters degree programs in education, or masters degree programs in school administration shall
223 provide performance reports to the state [board of education]. The performance reports shall
224 follow a common format, shall be submitted according to a plan developed by the state [board],
225 and shall include the information required under the plan developed by the state [board].

226 (g) It is the policy of this state to encourage lateral entry into the profession of teaching
227 by skilled individuals from the private sector. To this end, before the [insert date] school year
228 begins, the state [board of education] shall develop criteria and procedures to accomplish the
229 employment of such individuals as classroom teachers. Beginning with the [2006-2007] school
230 year, the criteria and procedures shall include preservice training in the identification and
231 education of children with disabilities and positive management of student behavior, effective
232 communication for defusing and deescalating disruptive or dangerous behavior, and safe and
233 appropriate use of seclusion and restraint. Regardless of credentials or competence, no one shall
234 begin teaching above the [middle level of differentiation]. Skilled people who choose to enter
235 the profession of teaching laterally may be granted a provisional teaching certificate for no more
236 than [five years] and shall be required to obtain certification before contracting for a [sixth year]
237 of service with any local administrative unit in this State.

238 (h) It is further the policy of this state to ensure that local [boards of education] can
239 provide the strongest possible leadership for schools based upon the identified and changing
240 needs of individual schools. To this end, before the [insert date] school year begins, the state
241 [board of education] shall carefully consider a lateral entry program for school administrators to
242 ensure that local [boards of education] will have sufficient flexibility to attract able candidates.
243

244 Section 4. [*Professional Development Plan for Training in Managing Disruptive*
245 *Behavior.*] Professional development should be clearly matched to the goals and objectives of the
246 plan. This professional development shall include a component to train appropriate school
247 personnel in the management of disruptive or dangerous student behavior. Appropriate school
248 personnel may include, but is not limited to, teachers, teacher assistants, school administrators,
249 bus drivers, school resource officers, school psychologists, and school counselors. The training
250 shall include instruction in positive management of student behavior, effective communication
251 for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of
252 seclusion and restraint. The appropriate personnel with priority for the training shall include
253 those staff members who are most likely to be called upon to prevent or address disruptive or
254 dangerous student behavior. Each local board of education shall include in this component of its
255 safe school plan procedures to evaluate the effectiveness of this training in preventing or
256 addressing disruptive or dangerous student behavior. Local boards of education are encouraged
257 to use available sources of discretionary revenue to implement the plan to train personnel in the
258 management of disruptive or dangerous student behavior. Local boards may only be required to
259 implement the behavior management training component of the plan to the extent that funds have
260 been appropriated for this purpose by the [General Assembly] or by local units of government.
261 By [January 1, 2006], local boards of education shall amend their safe school plans to include
262 this training component.
263

264 Section 5. [*Local [Board] Duties to Report Certain Incidents of Seclusion and Restraint.*]
265 In addition to the powers and duties designated in [insert citation], local [boards of
266 education] shall have the power or duty to report certain incidents of seclusion and restraint.
267 Local [boards of education] shall maintain a record of incidents reported under Section 2(j)(4) of
268 this Act and shall provide this information [annually] to the state [board of education].
269

270 Section 6. [*Severability.*] [Insert severability clause.]
271

272 Section 7. [*Repealer.*] [Insert repealer clause.]
273

274 Section 8. [*Effective Date.*] [Insert effective date.]